

Mr. Wilson

LAW LIBRARY ARIZONA ATTORNEY GENERAL

August 8, 1949

Walter B. Love, Jr.
City Attorney
Casa Grande, Arizona

Dear Mr. Love:

We have your letter of June 9, 1949, wherein you ask the following question:

"Can a fireman be retired and receive a pension as provided by Section 16-1904, when neither he, nor the City have contributed any sums whatsoever as provided by Section 16-1912(b)?"

Your letter states that the City of Casa Grande has a volunteer fire company which has been organized for a number of years. We are not entirely familiar with the facts surrounding the operation of this fire company, but the following statutory provisions would seem to be applicable:

Section 16-2009 ACA 1939 provides:

"Compensation of members.--The volunteer firemen shall serve without compensation, provided, the fire chief and firemen shall receive such compensation for extra services performed by them as fixed by such company at a regular meeting thereof, subject to the approval of the board of supervisors, and performed by such chief, or member under the direction and order of the fire chief."

Section 16-1904, ACA 1939, as amended, (See 1947 Supplement) provides for retirement for length of service and reads in part:

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"retirement for length of service.--
(a) When any person has served as
a full time paid member of the same
fire department or fire company in
this state for twenty (20) years, the
last five (5) years of which shall
have been consecutive, then if he
either is fifty-seven (57) years of
age or over, or becomes physically
unable for any cause, while a member
of the fire department, to perform
the duties of the service, he may,
on his application and in the dis-
cretion of the board of trustees,
be retired on a monthly pension
equal to one-half the average
monthly salary received by him
for the twelve (12) months' period
next prior to his retirement, to
be paid from the firemen's relief
and pension fund for his incorpo-
rated city or town or organized
fire company. The pension shall
in no event exceed one hundred fifty
dollars (\$150) per month." (Emphasis
supplied).

Though such pension acts as this are to be given
a liberal construction, only those persons who can meet the
statutory qualifications are entitled to receive the benefits
provided. It is apparent that firemen who are not full time
paid members of a fire department or company are not entitled
to retire for length of service and draw a pension within the
provisions of Section 16-1904, supra. The language of this
section is clear and unambiguous in this regard. Before this
section was amended in 1941 it did make provision for such
persons. The first portion of the original section read:

"retirement of fireman for length of
service.-- Any person appointed or
having served as a regular paid
member, or any person appointed
and having served as a member of

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a volunteer fire department for twenty (20) years or more in this state, five (5) years of which have been consecutive, immediately preceding the end of such service as a member of a fire department, may be retired and receive from such fund a monthly pension equal to one-half the salary he received preceding such retirement. * * *
(Italics Supplied)

The section as amended and as it now reads only demonstrates the obvious intent of the legislature to remove volunteer firemen from length-of-service retirement coverage. There does not appear to be any other statutory provision which gives to such firemen the right to retire for length of service and receive retirement pensions.

The sections of Article 19, Chapter 16, ACA 1939, as amended, concerning the existence and operation of the firemen's relief and pension funds, particularly Section 16-1912, as amended, would seem to require the continued operation of said fund for the legally organized volunteer fire company in question even though such fund may be composed in the main, or in its entirety, of those amounts paid in by virtue of the tax on fire insurance premiums and although the fund cannot be used to pay retirement pensions to the members of such volunteer company.

In conclusion we reiterate it is our opinion that, if the City of Casa Grande is served by a legally organized volunteer fire company, none of the members of said company who are not full time paid members thereof can be retired and receive pensions as provided by Section 16-1904, as amended. Any remedy for this situation would seem to lie with the legislature.

Yours very truly,

FRED O. WILSON
Attorney General

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RICHARD C. BRINEY
Assistant Attorney General